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LANSING

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Analysis of Enrolled Senate Bill 1203

Topic: Foreclosure by Advertisement
Sponsor: Senator Cropsey
Co-Sponsors: None
Committee: Senate Judiciary
House Judiciary

Date Introduced: March 30, 2006

Date Enrolled: December 14, 2006

Date of Analysis: December 12, 2006

Position: The Department of Labor & Economic Growth is neutral on the bill.

Problem/Background: Michigan is one of 27 states that has adopted non-judicial foreclosure procedures. Foreclosure by advertisement requires the publication of notices in a newspaper and posting on the premises. Property sold at a foreclosure sale may be redeemed within a specified time. There is some uncertainty regarding the treatment of abandoned property in a foreclosure proceeding. Public Act 94 of 1986 provided for the presumption of abandonment of residential property after foreclosure hearings have begun, but recent interpretations in some counties have limited its application. As a result, redemption periods for abandoned property may in some cases be extended and may thereby contribute to neighborhood deterioration.

Description of Bill: The bill amends Chapter 32 of the Revised Judicature Act as follows:

- Clarify that if foreclosure proceedings have begun abandonment can be established by following the requirements of Section 3241a (e.g. personal inspecting the premises, posting a notice, and failing to receive written notice)
- Refer more broadly to residential property not exceeding four units rather than residential property not exceeding four units *and* not more than 3 acres in size.
- Revises the notice of abandonment.
- Require 15 days response to a notice of abandonment *after mailing* rather than 15 days after receipt.

Summary of Arguments

Pro: The bill will make a positive contribution toward preventing neighborhood blight by removing the current ambiguity in the law regarding presumption of abandonment in the crucial period after the sale and before the redemption period. The bill also streamlines the process by

giving the mortgagor 15 days after the notice is posted and mailed to reply rather than 15 days after receipt. This change is important, because when property is abandoned, the owner, or mortgagor, may never receive the notice. Meanwhile, the property can't be legally transferred and the vacant structure may become a target for vandals or illegal criminal activity.

Con: The Senate Fiscal Agency's analysis reports that the Real Property Law Section of the State Bar of Michigan is concerned that the bill may "exacerbate problems with the existing law". Nothing in current law or the bill requires notice to junior lien holders, such as those holding second mortgages, condominium associations with liens for unpaid dues, or other creditors who have taken the necessary steps to impose a lien on the property. A shortened exemption period could prematurely extinguish the right of these parties to redeem property.

Fiscal/Economic Impact: The bill will have no fiscal impact on the department or the State of Michigan.

Other State Departments: The bill does not directly affect any other departments.

Any Other Pertinent Information: None.

Administrative Rules Impact: No new or revised administrative rules will be required if this bill is enacted.